

**Vulcan-Hart Corporation (St. Louis Division) and
Stove, Furnace and Allied Appliance Workers
International Union of North America, AFL-
CIO, Local No. 110. Case 14-CA-13129**

August 17, 1982

**SUPPLEMENTAL DECISION AND
ORDER**

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

On June 14, 1982, the National Labor Relations Board issued a Decision and Order¹ in the above-entitled proceeding in which it found, *inter alia*, that in early October 1979, after employees had gone out on strike and while bargaining over a new contract was still in progress, the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by offering to reinstate William Lindhorst, president of the Local and the Union's chief negotiator, if he would resign his union office and agree not to run for office for the 3-year period following his return to work.² Accordingly, the Board ordered the Respondent to cease and desist from engaging in the aforesaid conduct.

Thereafter the General Counsel moved that the Board amend and/or modify its Order by providing for further appropriate relief in the form of reinstatement and backpay. The Respondent filed a memorandum in opposition.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Based on the entire record in this case, the Board has considered, and finds merits in, the General Counsel's motion.

By its very offer, the Respondent demonstrated that it was prepared to reinstate Lindhorst, notwithstanding that his earlier discharge might have been justifiable. However, to the extent that reinstatement was conditioned upon unlawful considerations, the Act affords Lindhorst the same protection as it would an individual who is denied initial employment solely because of his known or suspected union activities. Both situations involve unlawful discrimination.³ The Act requires that both

individuals be allowed the opportunity to consummate the employment relationship and that they be made whole for any loss of work occasioned by the discrimination practiced against them.⁴ That either Lindhorst's striker status or the arbitration award in his favor may impact on the effect of our reinstatement and backpay remedy is but a matter for compliance. In these circumstances, our failure to provide for reinstatement and backpay in Lindhorst's case was an inadvertent omission. We shall amend our previous Order accordingly. In all other respects we hereby reaffirm our original Decision and Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Vulcan-Hart Corporation (St. Louis Division), Kirkwood, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in our original Order, as amended herein and set forth in full below:

1. Cease and desist from:

(a) Refusing to bargain with Stove, Furnace and Allied Appliance Workers International Union of North America, AFL-CIO, Local 110, upon its request, as the exclusive representative of all employees in the appropriate unit.

(b) Discharging or in any other manner discriminating against its employees because of their union or protected concerted activities.

(c) Conditioning employees' reinstatement upon their resignation from union office or upon their agreement not to run for union office.

(d) Denying its employees any earned seniority rights in retaliation for their having engaged in protected strike activity.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

We find no merit in these contentions. Although the General Counsel did not expressly allege in the complaint or argue thereafter that the conduct in question violated Sec. 8(a)(3), the matter has been fully litigated, the same facts support a finding of violation under both Sec. 8(a)(1) and (3) and the two subsections of the Act are related with respect to this particular conduct. See *Fertilizer Company of Texas, Inc.*, 254 NLRB 1382 (1981).

⁴ Further, we would deem reinstatement and backpay essential as a means of restoring the *status quo ante* in this case, even if we were to have found that the Respondent violated only Sec. 8(a)(1) of the Act by engaging in the conduct here in question; that is, without finding the requisite discrimination.

¹ 262 NLRB 167.

² Lindhorst was discharged for insubordination on April 20, 1979. The Board declined to issue a complaint as a result of this discharge. However, the matter was later taken to arbitration and an award favorable to Lindhorst subsequently issued.

³ The Respondent contends that there is no basis for finding that it violated Sec. 8(a)(3) of the Act by offering to reinstate Lindhorst on the conditions set forth above and that, by so finding, the Board denied the Respondent procedural due process.

(a) Recognize and, upon request, bargain collectively with Stove, Furnace and Allied Appliance Workers International Union of North America, AFL-CIO, Local No. 110, as the exclusive representative of the employees in the appropriate unit described below, with regard to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement:

All production and shop maintenance employees in Respondent's South Oak Drive Plant, excluding office clerical employees and all supervisors as defined in the Act.

(b) Offer each of the following named employees immediate and full reinstatement to their former jobs or, if such jobs are no longer available, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements hired on or after November 1, 1979: Hill, Patterson, Huskey, White, D. Lindhorst, Daniels, Carter, Pritchett, Byndom, Oppelz, DeGeare, L. Simpkins, Williams, Trifonas, Cox, Miller, Moon, D. Simpkins, Burnette, Oatman, C. Karagiannis, Keyes, Montgomery, Singer, Kaiser, R. Burnia, Moiser, Watson, G. Karagiannis, L. Burnia, T. Simpkins, Young, and Ranachowski.

(c) Make whole the above-listed employees for any loss of earnings which they may have suffered by virtue of the discrimination practiced against them by paying them an amount equal to what they would have earned, plus interest, from November 1, 1979, to the dates they are offered reinstatement.

(d) Offer William Lindhorst full reinstatement to his former job or, if it is no longer available, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, discharging, if necessary, any replacement hired on or after October 3, 1979.

(e) Make William Lindhorst whole for any loss of earnings which he may have suffered by virtue of the discrimination practiced against him by paying him an amount equal to what he would have earned, plus interest, from October 3, 1979, to the date he is offered reinstatement.

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its Kirkwood, Missouri, plant copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by its representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain with Stove, Furnace, and Allied Appliance Workers International Union of North America, AFL-CIO, Local No. 110, as the exclusive representative of the following appropriate bargaining unit employees:

All production and shop maintenance employees in our South Oak Drive plant, excluding office clerical employees and all supervisors as defined in the Act.

WE WILL NOT discharge, refuse to reinstate, or otherwise discriminate against our employees because they have engaged in concerted union activities or because they have engaged in protected strike activity.

WE WILL NOT condition employees' reinstatement upon their resignation from union office or upon their agreement not to run for union office.

WE WILL NOT deny accrued seniority to any of our employees because they have engaged in protected strike activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL recognize and, upon request, bargain collectively with the aforesaid Union as the exclusive representative of all the employees in the above-described appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL offer the following named employees full reinstatement to their former jobs or, if such jobs are no longer available, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary any replacements hired on or after November 1, 1979:

Hill, Patterson, Huskey, White, D. Lindhorst, Daniels, Carter, Pritchett, Byndom, Oppelz, DeGeare, L. Simpkins, Williams, Trifonas, Cox, Miller, Moon, D. Simpkins, Burnette, Oatman, C. Karagiannis, Keyes, Montgomery, Singer, Kaiser, R. Burnia, Moiser, Watson, G. Karagiannis, L. Burnia, T. Simpkins, Young, and Ranachowski.

WE WILL offer William Lindhorst full reinstatement to his former job or, if it is no longer available, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, discharging, if necessary, any replacements hired on or after October 3, 1979.

WE WILL make whole the above-named employees for any loss of earnings plus interest which they may have suffered by virtue of the discrimination practiced against them.

VULCAN-HART CORPORATION (ST.
LOUIS DIVISION)